IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3392 OF 1986

M/s. National Textile Corporation
Limited and others ...Plaintiffs

Versus

M/s. Bimal Stores ...Defendants

Ms Swapnila Rane for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : SEPTEMBER 24th, 2007.

ORAL JUDGMENT:

1. The Plaintiffs have filed this suit for recovery of sum of Rs.6,51,984/- together with future interest at the rate of 21% per annum on the principal amount. According to the case of the Plaintiffs, Shree Sitaram Mills (hereinafter referred to as the said mills) has been transferred to the third Plaintiff i.e National Textile Corporation (MN.) Limited. According to the case of the Plaintiffs, the said mills had dealings with the Defendants whereby the said mills used to deliver cloth material to the Defendants. Supply of the cloth material was made by the said mills to the Defendants on the basis of delivery orders issued by the Defendants and the said mills used to deliver the goods on the basis of delivery orders issued by the Defendants. It is stated that the said mills had maintained an account

of the Defendants. On 18th October, 1983 it was found that a sum of Rs.4,02,406.54/- was the amount due and payable at the foot of the account of the Defendants. The Plaintiffs by their Advocate's letter dated 19th September, 1984 called upon the Defendants to pay the outstanding amount together with interest thereon. The Defendants replied to the said letter by their Advocate's letter dated 08th November, 1984 and denied the liability to pay the amount. By the said reply and by a subsequent letter dated 29th December, 1984, the Defendants demanded inspection of the accounts. The Plaintiffs by their Advocate's letter dated 29th September, 1986 forwarded a complete copy of the account of the Defendants maintained by the Plaintiffs. As the Defendants failed to make payment, the present suit has been filed for the recovery of the amount.

2. The suit was contested by the Defendants by filing written statement. The case of the Defendants is of denial. It is contended that the claim of the Plaintiffs is time barred. Following issues were settled on 04th March, 2006:

(i) Whether the Defendants prove that the claim is barred by limitation?

(ii) Whether the Defendants prove that the plaint is not verified as per the provisions of the Civil Procedure, Code?

(iii) Whether the Plaintiffs prove that goods worth Rs.4,02,406.54/- have been delivered by them to the Defendants?

(iv) Whether the Plaintiffs are entitled to decree of Rs.5,71,572/- with further interest at the rate of 21% per annum from the Defendants?

3. The Plaintiffs led evidence of Shri Arun Babajirao Rane, Assistant Accounts Officer of the Plaintiffs by filing an affidavit in lieu of examination in chief. His examination in chief was recorded in Court on 12th September, 2007. As none appeared for the Defendants, the cross-examination of the said witness was treated as closed. As the Defendants were absent, the suit was ordered to be listed for arguments. On 14th September, 2007 the suit was again adjourned till 20th September, 2007. On that day arguments were heard. On none of the aforesaid dates, the Defendants or their Advocates remained present. The Plaintiffs have produced on record office copy of gate passes issued by

the said Mills on 12th August, 1981, 13th August, 1981, 29th July, 1981 and 30th July, 1981. The said gate passes contain description of the goods sent to the Defendants. The name of the Defendants appeared as consignees. All the material particulars of the goods dispatched to the Defendants have been incorporated in the gate passes. Alongwith the gate passes, the Plaintiffs have produced the respective work-sheets of the goods dispatched as per the gate passes. The work-sheet contained all the details of the goods dispatched such as quantity and price. Alongwith the gate passes, respective work-sheets maintained by the said mills have been produced and proved by the said witness of the Plaintiffs. A copy of the accounts of the Defendants maintained by the said mills has been also produced on record. In the affidavit-in-lieu of examination in chief break-up of the amount claimed in the suit has been given by the Plaintiffs.

4. There is no cross-examination of the said witness made by the Defendants. The affidavit-in-lieu of evidence of the said witness has proved the claim of the Plaintiffs. The oral and documentary evidence led by the Plaintiffs has gone unchallenged. Hence, the claim of the Plaintiffs for principal amount has been duly proved.

5. The Plaintiffs have claimed further interest at the rate of 21% per annum. There is nothing on record to show that there was an agreement between the said mills and the Defendants to pay interest at a particular rate on the outstanding amount. Considering the facts and circumstances of the case, further interest will have to be fixed at the rate of 9% per annum. The issues framed will have to be answered accordingly.

6. Hence, the suit is decreed in terms of prayer clause (a) with modification that interest payable on the principal amount of Rs.4,02,406.54/- will be at the rate of 9% pr annum from the date of institution of the suit till payment or realisation. The Advocate on record for the Plaintiffs will be free to take back compilation of documents produced by the Plaintiffs.

JUDGE